

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**COUNTRY AIRE MOBILE HOME
PARK, LLC**

Wastewater Facility
NPDES ID No. 6-08-00-6-00

**ADMINISTRATIVE
CONSENT ORDER
NO. 2009-WW-03**

**TO: Terry Myhre and Peter Spindler
1401 W. 76th St., Ste 135
Richfield, MN 55423**

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (Department) and Country Aire Mobile Home Park, LLC ("Country Aire"). Country Aire is the beneficial owner of the subject property and operates a waste water disposal system serving residents of the Country Aire Mobile Home Park in Ogden, Iowa ("Park"). The Park was acquired with the waste water disposal system already in place with limited reliable information regarding its original specifications and existing condition. The purpose of this Order is to resolve issues relating to discharge of effluents to waterways of the state and the necessary NPDES permit for future discharge to a navigable waterway from the waste water disposal system. Country Aire denies liability or wrong-doing. The Order requires Country Aire to implement a plan for upgrading the waste disposal system, to maintain best management practices prior to issuance of an NPDES permit, and to submit a complete and accurate NPDES application. The Order assesses an administrative penalty of \$3,000.00, a portion of which may be waived. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Janet Gastineau, Environmental Specialist
Department Field Office #5
401 S.W. 7th, Suite I
Des Moines, IA 50309
Ph: 641-424-4073

Relating to legal requirements:

David L. Wornson, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Country Aire is the beneficial owner of property located at 965 222nd Dr., Ogden, Iowa, that was acquired on contract in 1986 as a developed land-leased community. Country Aire operates a semi-public waste water disposal system (disposal system) to serve the residents of a residential community that is known as Country Aire Mobile Home Park. Country Aire acquired its beneficial ownership of the subject property on or about April 21, 1998. It is in the process of documenting a formal transfer of record title from its predecessor-in-interest.

2. In 1974 the then-owner of the disposal system was required to make modifications to the disposal system and was issued an operation permit under then existing administrative rules. The permit required the then-owner to plug an outlet from the lagoon with concrete to avoid discharge of waste water. The Department inspected the system in January 1975 and, although it could not be determined whether the outlet had been plugged, it was determined that a "shear gate" had been installed for the purpose of preventing outflow through the outlet pipe, thus achieving the required result.

3. By letter dated May 24, 1985, the Department notified the then-owner of the system, L & C Homes, Inc., that due to changes in state and federal law, this system was *not* required to obtain a NPDES operation permit. The permit exemption was based on the determination that the system qualified as a "semi-public sewage disposal system" the design and construction of which had been approved by the Department as a "no discharge" lagoon type system.

4. In September 2004, the Department conducted an inspection of the disposal system at the Park in response to a citizen complaint. The Department issued a notice of alleged violation (NOV) dated September 28, 2004, addressed in care of Peter Spindler of Myhre Investments, finding that the lagoon had not been properly maintained and that the lagoon was discharging effluent to a drainage ditch leading to a waterway. The Department required Country Aire to submit an NPDES permit application and an engineering evaluation of the system by November 15, 2004. An NPDES permit application was not submitted by November 15, 2004.

5. On December 17, 2004, Donn Stone of Stone Consulting, Inc., at the behest of Country Aire, submitted to the Department an engineering evaluation that found that the lagoon was discharging effluent through an outfall. How effluent was reaching the discharge outfall was not known. The engineer concluded that the lagoon appeared to have been designed for seepage into groundwater. The report recommended that the lagoon be dredged and cleaned and then its

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operational design and capacity be measured to determine whether it could operate without a discharge or if further modifications would be needed to prevent such discharge.

6. In addition to hiring Stone Consulting, Inc. for guidance, Country Aire performed some lagoon maintenance efforts, including fence repair and securing the access gate, as well as some dredging. Subsequently, Mr. Stone reported that, despite the partial dredging that had been completed in October 2006, the lagoon continued to discharge effluent into the drainage ditch.

7. The Department issued an NOV addressed in care of Peter Spindler of Myhre Investments, dated November 14, 2006. Among other things, the NOV required the owner to submit an NPDES permit application by January 8, 2007.

8. A partially completed NPDES permit application was submitted by Mr. Stone on January 23, 2007. The application identified "Myhre Investments" as the "owner" and was signed by Peter Spindler.

9. A formal notice from the Department dated February 27, 2008, required the owner to complete the application and pay the \$85 application fee.

10. Because of the lack of a satisfactory response, the Department inspector contacted Peter Spindler on or about March 13, 2008, and informed him that the matter would be referred to the Department's legal services bureau for enforcement.

11. While the Department inspected the facility on March 17, 2008, and confirmed that the lagoon was continuing to discharge through a pipe to a four foot box culvert and then into the drainage ditch, the most recent effluent sampling conducted by the Department showed that the effluent levels at the time of sampling may have been within the expected limitations allowed under an NPDES permit.

12. On September 24, 2008, Peter Spindler, Donn Stone (of Stone Consulting, Inc.), and legal counsel met with Department representatives, including the Department's legal counsel, to discuss the situation; to reach a clearer understanding of the Department's requirements that would both protect the waterways of the state from contamination and permit the continued operation of the land-leased community that is providing an important source of affordable housing; and to agree upon a process and schedule for addressing the situation responsibly.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part that if a person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto, the Director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease, and Country Aire is a person as defined in Iowa Code section 455B.171(16).

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2. While Country Aire, as the beneficial owner and operator of the Park and waste water disposal system has denied any such violations, it has agreed to a detailed process and schedule for addressing the issues with the guidance of Stone Consulting, Inc., and Department representatives; and has agreed to the entry of this Consent Order, and has agreed to waive rights of appeal therefrom.

V. ORDER

THEREFORE, the Department orders and Country Aire and the Department mutually agree to comply with the following provisions in as a means of resolving this matter:

1. Country Aire will arrange for Donn Stone of Stone Consulting, Inc. to monitor the waste water disposal system and submit monthly operation reports to Field Office #5 by the 15th of each month. The first monthly report must be submitted by the 15th of the month following the first full month reporting period after this Order is finalized.
2. Country Aire will obtain the services of a properly certified operator within 30 days of this Order being issued.
3. By January 7, 2009, Country Aire will have Stone Consulting, Inc. submit a facilities plan, also referred to as a "preliminary engineering report," outlining proposals for how to upgrade the disposal system to comply with DNR rules.
4. By March 9, 2009, the Department project manager will review the plan and discuss as necessary any modifications or issues that need to be further resolved. The objective will be to have a facility plan approved by March 9, 2009.
5. Between March 9, 2009, and May 1, 2009, Stone Consulting, Inc. will submit a completed NPDES permit application for the Department permit section.
6. By May 1, 2009, Stone Consulting, Inc. will submit final plans and specifications.
7. By July 1, 2009, the DNR project manager will complete a review of the final plans and specifications, discuss any issues or modifications as necessary with Stone Consulting, Inc., and approve final plans and specifications.
8. Construction to implement the approved plans and specifications will begin within thirty (30) days after approval by the Department project manager, to be completed by December 31, 2009.
9. Without admission of violation or liability, Country Aire agrees to the imposition of a total penalty assessment is \$3,000.00. Country Aire agrees to pay \$1,500.00 to the order of the "Iowa Department of Natural Resources" within 30 days of receipt of the fully executed Order. The Department agrees to waive the additional balance of \$1,500 upon submittal of adequate proof that the facility upgrade has been completed in substantial compliance with the schedules specified in paragraphs 2-8 and there has been substantial compliance with the monitoring requirements as provided in paragraph 1 above. Country Aire stipulates that this penalty amount

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is justified under the circumstances without proof of actual violations and as an inducement to full compliance with applicable laws and regulations.

VII. WAIVER OF APPEAL RIGHTS


Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Country Aire. By signature to this Order all rights to appeal this Order are waived by Country Aire.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the alleged violations described in this Order.


COUNTRY AIRE by Peter Spindler, its authorized agent

Dated this 23 day of
January, 2009


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 9 day of
Feb., 2009

Terry Myhre, NPDES Permit No. 6-08-00-6-00, Field Office No. 5, David Wornson, I.B.2.c & d.